

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
9/27/2019 4:11 PM  
BY SUSAN L. CARLSON  
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No. 96990-6

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/7/2019  
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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NICOLE BEDNARCZYK and CATHERINE SELIN, individually and on  
behalf of all others similarly situated,

Plaintiffs/Petitioners,

vs.

KING COUNTY,

Defendant/Respondent.

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BRIEF OF AMICUS CURIAE  
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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## **I. IDENTITY AND INTEREST OF AMICUS CURIAE**

The Washington State Association for Justice Foundation (WSAJF) is a not-for-profit corporation organized under Washington law, and a supporting organization to Washington State Association for Justice. WSAJF operates an amicus curiae program and has an interest in the rights of persons seeking redress under the civil justice system, including an interest in the authority of the Court to safeguard the integrity of the jury system for the benefit of jurors and litigants.

## **II. INTRODUCTION AND STATEMENT OF THE CASE**

This case concerns a citizen's right to be paid a minimum wage when serving as a juror in order to prevent exclusion from jury service due to financial hardship. The facts are drawn from the Court of Appeals' opinion and the briefing of the parties. *See Rocha v. King County*, 7 Wn. App. 2d 647, 435 P.3d 325, *review granted*, 193 Wn.2d 1017 (2019); App. Amended Op. Br. at 3-9; Pet. for Rev. at 6-9; Ans. to Pet. for Rev. at 4-7; App. Supp. Br. at 2-5; Resp. Supp. Br. at 1-4.

Plaintiffs Nicole Bednarczyk and Catherine Selin were summoned for jury duty in King County. Neither worked for an employer that compensated employees during a work absence for jury service. Bednarczyk requested and received an excuse from jury service from the court due to economic hardship. Selin served on a jury for 11 days.

The plaintiffs filed suit against King County, alleging the minimal amount paid jurors for jury service (\$10 per day plus mileage) had the effect

of excluding people of low and moderate economic status from jury service at a disproportionate rate in violation of the requirement in RCW 2.36.080(3) that “[a] citizen shall not be excluded from jury service... on account of economic status” (brackets added). The plaintiffs also sought a declaratory judgment that jurors are “employees” within the meaning of the Minimum Wage Act (MWA), ch. 49.46 RCW. The trial court granted King County summary judgment and dismissed the plaintiffs’ claims.

In a 2-1 decision, the court of appeals affirmed. *See Rocha*, 7 Wn. App. 2d at 649. The court held that the plaintiffs could not bring a disparate impact claim because the Legislature’s intent as expressed in RCW 2.36.080 is to ensure that jurors have the *opportunity* to be considered for jury service, which is accomplished by including jurors of low and moderate economic status in the master jury list and summoning them for jury duty. *See Rocha*, 7 Wn. App. 2d at 652-56. The court held that the legislative intent expressed in the statute does “not guarantee the right to actually serve on a jury when summoned.” *Id.* at 654. The court held that jurors are not employees under the MWA, because jury service is performed as a civic duty and jurors are not entitled to compensation. *Id.* at 658.

The court of appeals stated that it is not disputed that “the amount jurors are paid causes jurors of lower economic status to not be able to serve, and, therefore, the amount jurors are paid has a disparate impact on people of lower economic status.” *Id.* at 653. The dissenting judge stated this violates the mandate that “[a] citizen shall not be excluded from jury service

in this state on account of... economic status.” *Id.* at 660-61 (Bjorgen, J. dissenting) (quoting RCW 2.36.080(3) (brackets added)).

### **III. ISSUE PRESENTED**

Whether the Washington Supreme Court may compel payment to jurors for jury service pursuant to its inherent judicial power to control and administer court functions and ensure the efficient and competent administration of justice, and its judicial authority to protect the right to a jury trial.<sup>12</sup>

### **IV. SUMMARY OF ARGUMENT**

This Court has inherent judicial power to ensure the competent administration of justice, and judicial authority to protect the integrity of the jury system. This Court should exercise that authority to require reasonable compensation to jurors in order to allow citizens to serve as jurors without suffering unreasonable financial hardship. Providing reasonable compensation for jury service should result in more economically and ethnically diverse juries.

### **V. ARGUMENT**

#### **A. There Is A Systematic Exclusion Of Jurors On Account Of Economic Status In King County Courts.**

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<sup>1</sup> WSAJF understands that Public Justice and the American Association for Justice intend to request permission to file an amicus brief in this case addressing this issue, supporting its analysis with federal authorities. WSAJF's amicus brief focuses on Washington authorities. WSAJF believes the additional argument will aid the Court in resolving the issues in this case. *See* RAP 10.6(b)(4).

<sup>2</sup> Respondent King County contends the Court should not consider this issue because it was not raised below. King County has argued throughout this litigation that the issue of increasing juror compensation is solely a matter for resolution by the Legislature. Argument regarding the Court's judicial power to require increased juror compensation is responsive to King County's argument. Further, " the Court has inherent authority to consider the issue if such consideration is necessary to reach a proper decision." *Shoreline Cmty. Coll. Dist. No. 7 v. Emp't Sec. Dep't*, 120 Wn.2d 394, 402, 842 P.2d 938 (1992).



In 1998, the Board for Judicial Administration, chaired by the Chief Justice of the Washington Supreme Court, noted that Washington State provides citizens the right to trial by jury, there is evidence that an increasing number of citizens summoned for jury service do not appear, and it is a responsibility of the courts to determine what features of the jury system could be changed to encourage citizens to serve so litigants can rely on a jury system that has integrity and is fair and impartial. *See* Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Appendix 1.<sup>3</sup> The Board resolved that a committee be formed to examine and recommend improvements to the jury system, including examining the adequacy of juror reimbursement, and to provide a written report of its findings and recommendations to the Board. *See id.*

The Jury Commission included trial court judges and administrators, county clerks, attorneys, citizens who had served as jurors, legislators and business and labor representatives. *See id.* at xv, Executive Summary. In the Preamble to its Report, the Commission noted that jurors perform a vital service that the justice system cannot function without, and adopted principles regarding jurors' rights, including that jurors are entitled to be fairly compensated and are entitled to freedom from discrimination. *See id.* at vii, Executive Summary. The Commission reported:

The Commission reviews a fee increase as its highest priority. Citizens required to perform jury service should be compensated fairly and appropriately. Legislation should be drafted requiring that current fees be raised, with the increase funded by the State...Jurors

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<sup>3</sup> The Washington State Jury Commission Report is Exhibit 3 to the attached declaration at CP 288-414.

in most jurisdictions have not received a raise since 1959 when the \$10 per day juror fee was first instituted.... The Commission considers it unacceptable that this state's citizens are required to perform one of the most important civic duties at a rate that does not remotely approach minimum wage.... Washington State relies on citizens to make its most important decisions about law, business practice, and criminal matters. Jurors should be compensated appropriately for this crucial civic duty.

*Id.* at 23-24, Recommendations.

The Committee Chair noted that Washington courts report that it has become difficult to find prospective jurors, and concluded:

The Commission has given the highest priority to increasing juror fees... Increased fees will not only address the current inequity in juror compensation, but will also contribute to more economically and ethnically diverse juries by enabling a broader segment of the population to serve.

*Id.* at iii, Executive Summary.

In 2017, juror fees remained at \$10 per day plus travel expenses. The Washington State Minority and Justice Commission (MJC) co-hosted the annual Supreme Court Symposium on the topic of jury diversity. *See* Minority and Justice Commission on Jury Diversity Task Force 2019 Interim Report, at 1.<sup>4</sup> MJC created the Jury Diversity Task Force (Task Force), which included judges, attorneys, court administrators, county clerk representatives and legislators. *See id.* At the first Task Force meeting in 2018, a detailed policy memorandum listed major factors resulting in minority underrepresentation on juries, including:

**Economic Hardship:** Given the correlation between race and poverty, minorities are disproportionately likely to seek economic

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<sup>4</sup> The Interim Report is cited at King County's Supp. Br. at 19-20, with a web address provided at King County's Supp. Br. at 20 n.9.

hardship excusals and few jurisdictions have programs to alleviate this burden.

*Id.* at 2. In its 2019 Interim Report, the Task Force identified increasing juror compensation as a “high priority” recommendation, stating:

The Task Force recognized that jury compensation in Washington is inadequate. Data shows that financial hardship is the second highest reason to excuse a potential juror, behind undeliverable summonses. The Task Force believes that lower income and minority populations are disproportionately affected by the financial hardships of jury service.... [T]he Task Force recommended pursuing a statewide juror pay increase...

*Id.* at 3-4 (brackets added).

In *Bednarczyk*, the plaintiffs provide detailed data regarding the composition of King County juries and the correlation between poverty and race. *See* App. Amended Op. Br. at 5-9; App. Supp. Br. at 2-4. In accordance with RCW 2.36.100(1) and GR 28, King County excuses potential jurors if they “are not being paid for jury service by their employer” and “will be unable to meet the[ir] basic needs [or those of their] family.” *See* App. Br. at 2-3 (brackets added by plaintiffs). While King County staff record financial hardship excusals authorized by staff, most excusal requests are authorized by judges and go unrecorded. *See id.* at 3. Even with that limitation, King County staff recorded 5,100 financial hardship excusals from 2011-2016. *See id.* Judges have reported in excess of 50% requests for financial hardship excusals for a trial lasting more than two weeks, a need to have as many as 200 prospective jurors in some cases to seat a jury of 12 due to the number of financial hardship excusals, and the need to continue or delay civil trials due to the inability to seat jurors.

*See id.* at 3-4. During 2011-2016, only 147,743 people out of 510,681 that were summoned for jury duty responded, and plaintiffs question whether potential jurors' fears of not being granted a financial hardship excusal factor into that response rate. *See id.* at 4.

In this case, King County does not dispute “that the amount jurors are paid causes jurors of lower economic status to not be able to serve, and, therefore, the amount jurors are paid has a disparate impact on people of lower economic status.” *Rocha*, 7 Wn. App. 2d at 653.

**B. Overview Of The Court's Inherent Judicial Authority To Control And Administer Court Functions And Ensure The Efficient And Competent Administration Of Justice, And Judicial Authority To Protect The Right To A Jury Trial.**

The doctrines of separation of powers, checks and balances, and inherent judicial authority developed during the revolutionary era and are major constituents of the federal and state constitutions. *See In re Salary of Juvenile Dir.*, 87 Wn.2d 232, 237-240, 552 P.2d 163 (1976); *Zylstra v. Piva*, 85 Wn.2d 743, 754, 539 P.2d 823 (1975) (Utter, J., concurring). The separation of powers doctrine addressed concerns regarding the domination by one branch of government over the others. *Zylstra*, 85 Wn.2d at 753 (Utter, J., concurring). “One of the fundamental principles of the American constitutional system is that the governmental powers are divided among three departments – the legislative, the executive, and the judicial – and that each is separate from the other.” *Carrick v. Locke*, 125 Wn.2d 129, 134, 882 P.2d 173 (1994) (citation omitted); *see also Hale v. Wellpinit School Dist. No. 49*, 165 Wn.2d 494, 503-04, 198 P.3d 1021 (2009). There is no formal

separation of powers clause in the Washington State Constitution, but “the very division of our government into different branches has been presumed throughout our state’s history to give rise to a vital separation of powers doctrine.” *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 980, 216 P.3d 374 (2009) (quoting *Carrick*, 125 Wn.2d at 135). “Our state constitution contains separate provisions establishing the Legislative Department (Article II), the Executive (Article III), and the Judiciary (Article IV), and, as such, provides for this separation of functions.” *Spokane County v. State*, 136 Wn.2d 663, 667, 966 P.2d 314 (1998).

The separation of powers doctrine “serves mainly to ensure that the fundamental functions of each branch remain inviolate,” *Carrick*, 125 Wn.2d at 135, and “[b]oth the legislature and the judiciary intrude upon the other’s authority cautiously so as not to violate the doctrine...” *Hale*, 165 Wn.2d at 506 (brackets added). However, the doctrine “is grounded in flexibility and practicality, and rarely will offer a definitive boundary beyond which one branch may not tread,” and does not require the three branches to be “hermetically sealed off from one another” as some overlap must exist. *Carrick*, 125 Wn.2d at 135. “It is an oversimplification to view the doctrine as establishing analytically distinct categories of government functions,” and those functions are not “cleanly compartmentalized.” *In re Salary of Juvenile Dir.*, 87 Wn.2d at 242. In order to effectively function, each branch must work with the others. “The separate branches must remain partially intertwined to maintain an effective system of checks and

balances... The art of good government requires cooperation and flexibility among the branches.” *Hale*, 165 Wn.2d at 507 (citations omitted); *see also Spokane County*, 136 Wn.2d at 672.

Washington Const. art. IV establishes the judiciary as a separate branch of government, and art. IV, § 1 vests this Court with judicial power. *See* Wash. Const. art. IV; Wash. Const. art. IV, § 1; *see also City of Fircrest v. Jensen*, 158 Wn.2d 384, 394, 143 P.3d 776 (2006). The fundamental function of the judicial branch is judicial review, which includes the authority to interpret the law. *See Hale*, 165 Wn.2d at 504. The judiciary also is empowered to enforce constitutional guaranties, including the art. I, § 21 guaranty that the right to trial by jury shall remain inviolate. *See Seattle District No. 1 v. State*, 90 Wn.2d 476, 501-02, 585 P.2d 71 (1978).<sup>5</sup>

Judicial authority is not limited to adjudicating matters in controversy, but also includes judicial administration of functions essential for the courts to carry out their constitutional mandate. *See In re Salary of Juvenile Dir.*, 87 Wn.2d at 242. These administrative functions include judicial authority to determine workable budgeting processes and the basic needs of the courts as to equipment, facilities and supporting personnel. *See id.* at 236 n.1 & 245.<sup>6</sup>

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<sup>5</sup> Accordingly, if the state fails to provide the constitutionally required right to a jury trial, the judiciary is authorized to enforce that provision. *See Seattle District No. 1*, 90 Wn.2d at 502 n.6. "Just as the Legislature cannot abridge constitutional rights by its enactments, it cannot curtail mandatory provisions by its silence." *Id.* at 503 n.7.

<sup>6</sup> For example, these needs may include the salary of a superior court director of juvenile services, *see In re Salary of Juvenile Dir.*, 87 Wn.2d at 252, or the compensation for court-appointed counsel, *see State v. Perala*, 132 Wn. App. 98, 118-19, 130 P.3d 852, *review denied*, 158 Wn.2d 1018 (2006).

Although the judiciary has responsibility for administrative functions, it is the only branch excluded from participating in the formulation and adoption of the government budget. *See id.* at 244. Given the judiciary's exclusion from the budget process, "the responsibility over the administrative aspects of court-related functions is shared between the legislative and judicial branches." *Wash. State Council of County & City Emps. v. Hahn*, 151 Wn.2d 163, 168-69, 86 P.3d 774 (2004). While no authority rests in the judiciary to appropriate funds, in order for the courts to maintain their independence as a separate branch of government "they must have the power to do all things that are reasonably necessary for the proper administration of their office within the scope of their jurisdiction." *Zylstra*, 85 Wn.2d at 754 (Utter, J., concurring).

While courts must limit their incursions into the legislative realm in deference to the separation of powers doctrine, separation of powers also dictates that the judiciary be able to ensure its own survival when insufficient funds are provided by the other branches. To do so, courts possess inherent power, that is, authority not expressly provided for in the constitution but which is derived from the creation of a separate branch of government and which may be exercised by the branch to protect itself in the performance of its constitutional duties.

It is axiomatic that, as an independent department of government, the judiciary must have adequate and sufficient resources to ensure the proper operation of the courts.

*In re Salary of Juvenile Dir.*, 87 Wn.2d at 245; *see also State v. Wadsworth*, 139 Wn.2d 724, 740-41, 991 P.2d 80 (2000).

The inherent power of the judiciary may be used to require the payment of necessary funds "to preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed."

*In re Salary of Juvenile Dir.*, 87 Wn.2d at 245 (quoting *Commonwealth ex rel. Carroll v. Tate*, 442 Pa. 45, 53, 274 A.2d 193 (1971), *cert. denied*, 402 U.S. 974, 91 S. Ct. 1665, 29 L. Ed. 2d 138 (1971)).<sup>7</sup> The importance of judicial independence and the need for the judiciary to maintain effective control over its administrative functions “cannot be overstated.” *Spokane County*, 136 Wn.2d at 668.

The question to be asked is not whether two branches of government engage in coinciding activities, but rather whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another.

*Carrick*, 125 Wn.2d at 135 (quoting *Zylstra*, 85 Wn.2d at 750). *See also City of Fircrest*, 158 Wn.2d at 393-94.

This Court has noted that judicial action to compel funding of its own functions may risk an adverse effect on working relations with other branches of the government and public support for the courts. *See In re Salary of Juvenile Dir.*, 87 Wn.2d at 247-48. Such an action circumvents “the political allocation of available monetary resources by representatives of the people elected in a carefully monitored process” and risks “the judiciary’s image of impartiality and the concomitant willingness of the public to accept its decisions as those of a fair and disinterested tribunal.” *Id.* at 248-49. Nevertheless, the need for judicial independence and proper court functioning may sometimes necessitate that courts compel funding.

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<sup>7</sup> This Court cited *Commonwealth ex rel. Carroll* in both *In re Salary of Juvenile Dir.*, 87 Wn.2d at 245, and *Zylstra*, 85 Wn.2d at 749. In *Carroll*, the Pennsylvania Supreme Court used the inherent power of the judiciary to order an additional \$2,458,000 as reasonably necessary funds for the budget of the Court of Common Pleas. *See* 274 A.2d 193, 198 & 200.



*Id.* at 245. In light of the risks to harmonious relations with other government branches and the public’s perception of the judiciary, it is incumbent upon the courts, when they must use their inherent judicial power to compel funding, to impose the highest burden of proof and require clear, cogent and convincing evidence of a reasonable need for additional funds.

*Id.* at 251.

**C. The Inherent Judicial Authority To Administer Court Functions And Ensure The Competent Administration Of Justice, And The Judicial Authority To Protect The Right To A Jury Trial, Require Adequate Juror Compensation To Prevent Juror Exclusion Because Of Economic Status.**

***Inherent Judicial Authority***

A requirement by this Court for increased juror pay allocates public resources to the court system beyond the amounts designated by the Legislature for juror reimbursement in RCW 2.36.150. The question involved here is whether the Legislature’s failure to increase juror pay “threatens the independence or integrity or invades the prerogatives” of the judiciary. *See Zylstra*, 85 Wn.2d at 750. In *Zylstra*, the Court held that the judiciary has inherent authority to require necessary allocation of funds to perform its mandated functions:

The court cannot, of course, relinquish either its power or its obligation to keep its own house in order. In the unlikely event that the county refused adequate salary funds, the court would be both obliged and empowered to protect its proper functioning and see to the effective administration of justice... The legislature may provide by statute for the compensation of judicial employees... However, such a legislative enactment does not in any way impair the inherent power of the judiciary to require payment of the necessary funds for the efficient administration of justice.

85 Wn.2d at 748-49.<sup>8</sup>

A court's inherent judicial power to "see to the effective administration of justice" necessarily involves attention to the proper treatment of jurors. The Washington State Jury Commission noted that jurors "perform a vital service to the community" and the "justice system cannot function without citizens willing to serve as jurors." *See* Jury Commission Report, Preamble, at vii Executive Summary. Courts find it increasingly difficult to find prospective jurors. *Id.* Increased juror compensation "will allow a broader segment of the population to serve," *id.*, and accordingly should assist in alleviating the difficulties in finding sufficient jurors to serve. Given the Legislature's inadequate provision of funds to appropriately compensate jurors, the Court is "both obliged and empowered to protect its proper functioning and see to the effective administration of justice," *Zylstra*, 85 Wn.2d at 748-49, by requiring increased juror compensation.

***Enforcement of Article I § 21 Guaranty of the Right to a Jury Trial***

The judiciary is empowered to enforce the Washington State Constitution guaranty that the right to jury trial shall remain inviolate. *See* Wash. Const. art. I, § 21; *Seattle School Dist. No. 1*, 90 Wn.2d at 502-03. "The term 'inviolable' connotes deserving of the highest protection," and the

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<sup>8</sup> In *In re Salary of the Juvenile Dir.*, the Court quoted an 1838 Pennsylvania case in support of its discussion of inherent judicial authority:

It is the undoubted duty of the court to prescribe the manner of (a juror's) treatment and keeping; and it must sometimes occasion unusual expense... (This cost) must be at the public charge, for it is as much a part of the contingent expenses of the court, as is the price of the firewood and candles consumed in the courtroom.

87 Wn.2d at 246 (quoting *Commissioners v. Hall*, 7 Watts 290, 291 (Pa. 1838)).

right “must not diminish over time and must be protected from all assaults to its essential guarantees.” *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711, 780 P.2d 260 (1989).

RCW 2.36.080(1) provides that it is the policy of the State of Washington that persons selected for jury service shall be selected “from a fair cross-section of the population,” and (3) provides that no one shall be excluded from jury service “on account of economic status.” In *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 220, 66 S.Ct. 94, 90 L.Ed. 1181 (1946), the Court held that “[t]he American tradition of trial by jury... necessarily contemplates an impartial jury drawn from a cross-section of the community.” (Brackets added.) The systematic exclusion of lower income workers from jury service cannot be justified by federal or state law. *See id.* at 222. Lower income workers constitute a substantial portion of the community, and cannot be systematically excluded from jury service “without doing violence to the democratic nature of the jury system.” *Id.* at 223. Such an exclusion would tend to “establish the jury as the instrument of the economically and socially privileged.” *Id.* at 224.

This Court’s authority to enforce the guaranty of the right to a jury trial provides an additional basis to require an increase in juror compensation. King County’s failure to provide adequate juror compensation leads directly to underrepresentation of lower income citizens on juries. *See Rocha*, 7 Wn. App. 2d at 653 (it is not disputed that “the amount jurors are paid causes jurors of lower economic status to not be able

to serve,” and “the amount jurors are paid has a disparate impact on people of lower economic status”). The guaranty that the right to a trial by jury shall remain inviolate should include the maintenance of a jury selection process that provides a jury from a fair cross-section of the population, and does not exclude jurors based on their economic status. The Court can protect the right to a jury trial by requiring adequate juror compensation to permit juror service from every economic strata of society.

***Clear, Cogent and Convincing Evidence***

Plaintiffs’ references to reports and data from the Washington State Jury Commission Report, King County racial disparity data (Francisca Murnan and Alice Park, *Understanding King County Racial Inequities*, United Way of King County, November 2015), data from the Washington Administrative Office of the Courts, data from King County regarding juror financial hardship excusals, and multiple other sources, *see* App. Amended Opening Br. at 3-7, provide clear, cogent and convincing evidence of a reasonable need to support the Court’s judicial authority to require increased juror compensation.

**D. The Court Should Order Juror Compensation Pursuant To The MWA, Or Alternatively Should Order The Legislature To Provide For Increased Juror Compensation.**

Plaintiffs contend jurors should be paid compensation pursuant to ch. 49.46 RCW, Washington’s Minimum Wage Act (MWA). *See* App. Supp. Br. at 15-17. WSAJ Foundation agrees. Payment under the MWA would ensure that jurors are not excluded from service because of economic

status, and would comply with statutory requirements for application of the MWA.

The policy statement in Washington's Industrial Welfare Act, RCW 49.12.010, supports application of the MWA to juror compensation (the welfare of the state "demands that all employees be protected from conditions of labor which have a pernicious effect on their health," and the state "declares that inadequate wages... exert such pernicious effect"). The mandate in the Act, RCW 49.12.020, provides further support (it is unlawful "to employ any person... under conditions of labor detrimental to their health" and it is unlawful to employ workers "at wages which are not adequate for their maintenance"). The "declaration of necessity" in the MWA, RCW 49.46.005 applies as much to jury service as other work (the establishment of a minimum wage "is a subject of vital and imminent concern," and the "health, safety and the general welfare of the citizens of this state require the enactment" of a minimum wage to "allow workers to care for the health of themselves and their families").

The Washington State Jury Commission recommended that jurors should be compensated "fairly and appropriately," and found it "unacceptable" that jurors in Washington are compensated "at a rate that does not remotely approach minimum wage." *See* Commission Report at 23-24, Recommendations. The Commission stated that increased juror fees would "contribute to more economically and ethnically diverse juries by enabling a broader segment of the population to serve." The Commission's

recommendations and statements for increasing jury pay are consistent with the policies stated in Title 49 RCW for paying citizens under the MWA.

The author of an article in the NYU Journal of Legislation and Public Policy Journal proposed that legislatures and courts should use the federal minimum wage as a guideline for determining minimum compensation for jurors. *See* Evan A. Seamone, *A Refreshing Jury COLA*<sup>9</sup>: *Fulfilling The Duty To Compensate Jurors Adequately*, 5 N.Y.U.J. Legis. & Pub. Pol’y 289, 299 (2001-02). That author opined that the greatest impediment for many potential jurors to make it to the jury box is the low pay offered by the great majority of states. *See id.* at 295. “[P]ain stemming from low [jury] compensation is felt especially by self-employed individuals, single parents without the means to obtain childcare, and part or full-time workers who receive no compensation from their employers.” *Id.* at 297 (brackets added). Jury compensation serves the dual purposes of “ensuring the participation of all economic classes in the justice system,” and signifies “the value of the jurors’ contributions to the justice system.” *Id.* at 313. Those dual purposes are met by increasing jury compensation to an amount adequate to “allow workers to care for the health of themselves and their families,” as stated in the “declaration of necessity” in the MWA. RCW 49.46.005.

If the Court is disinclined to apply the MWA to jurors, it should nonetheless act to address the long-standing issue of inadequate juror

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<sup>9</sup> Cost of Living Adjustment.

compensation. The Court's inherent authority obligates it to protect its proper functioning and see to the effective administration of justice. *See Zylstra*, 85 Wn.2d at 748-49. The power vested in the Court in const. art. IV § 1 requires it to act, when necessary, in the face of alleged "conflict" with another governmental branch. *See Seattle School Dist. No. 1*, 90 Wn.2d at 496 & 507-08. The investment of judicial power in const. art. IV § 1 includes judicial authority to protect the art. I § 21 guaranty that the right to trial by jury shall remain inviolate. *See id.* at 501-02. Even when faced with a lack of physical power to enforce an order, the Court has a duty to issue appropriate orders in pursuit of justice. *See id.* at 506-07. In that instance, the Court relies upon the other governmental branches to obey its orders. *See id.* at 506-08.

Legal scholars have considered another option for Court action to address the inadequacy of funding to maintain an effective system of justice:

[S]chool finance litigation may provide the more appropriate model for judicial action. When finding that states have failed to provide functioning educational systems as required by their constitutions, courts have mandated that legislatures fix the problem but have generally avoided specifying the ultimate solution. In that model, courts have played an important role in holding legislators' feet to the fire to meet their constitutional responsibilities, but have left the problem of how best to raise and distribute adequate revenue to the legislature. Such a process tends to be slow and incremental, but it arguably preserves the respective constitutional responsibilities of the various branches of government while maintaining legislative accountability for budgeting.

G. Gregg Webb, Keith E. Whittington, *Judicial Independence, The Power Of The Purse, And Inherent Judicial Powers*, 88 *Judicature* 12, 45 (2004).

This Court has followed a similar model in school finance litigation. *See Seattle School District No. 1* at 537-38; *McCleary v. State*, 173 Wn.2d 477, 540-47, 269 P.3d 227 (2012). The risks of that model were borne out in *Seattle School Dist. No. 1*. In *McCleary*, the Court noted that in *Seattle School Dist. No. 1* the Court declared the funding system inadequate and deferred to ongoing legislative reforms, *McCleary*, 173 Wn.2d at 540, and described the aftermath:

The long term result was 30 years of an education system that fell short of the promise of article IX, section 1 and that ultimately produced this lawsuit. What we have learned from experience is that this Court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education. Article IX, section 1 is a mandate, not to a single branch of government, but to the entire state.... We will not abdicate our judicial role.

173 Wn.2d at 541.

Pursuant to its inherent judicial power to see to the effective administration of justice, and its constitutionally vested power to protect the right to trial by jury, the Court has an obligation to act to address the inadequacy of juror compensation and its effect on excluding citizens with lesser incomes from serving on juries. King County argues that it would be inappropriate for the Court to exercise its inherent judicial authority to compel additional funding for juror compensation, because to do so would interfere with ongoing collaborative efforts between the governmental branches – pointing to the 2019 Interim Report by the Minority and Justice Commission Jury Diversity Task Force. *See Resp. Supp. Br.* at 19-20. That report stated that “jury compensation in Washington is inadequate” and that

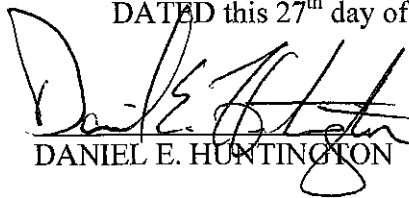


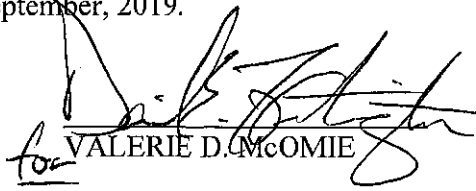
“lower income and minority populations are disproportionately affected by the financial hardships of jury service.” *See* Interim Report at 3. The Task Force identified increasing jury compensation as a “high priority” recommendation. *Id.* Nineteen years earlier, the Washington State Jury Commission gave its “highest priority” to increasing jury fees, considered it “unacceptable” that jurors served at a rate that did not remotely approach minimum wage and stated that jurors should be compensated appropriately for performing their crucial civic duty. *See* Jury Commission Report at 23-24, Recommendations. After the Jury Commission report in 2000, and after the Interim Report in 2019, juror fees in King County remain at the level set in 1959 – \$10 per day plus travel expenses. The Court should act to require an increase in juror compensation.

## VI. CONCLUSION

The Court should adopt the arguments advanced in this brief in the course of resolving the issues on review.

DATED this 27<sup>th</sup> day of September, 2019.

  
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On behalf of WSAJ Foundation

## **CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury, under the laws of the State of Washington, that on the 27<sup>th</sup> day of September, 2019, I served the foregoing document by email to the following persons:

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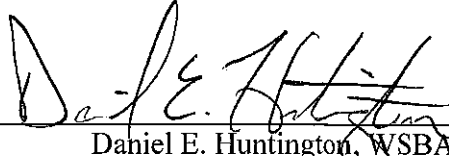
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September 27, 2019 - 4:11 PM

### Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96990-6  
**Appellate Court Case Title:** Nicole Bednarczyk, et al. v. King County  
**Superior Court Case Number:** 16-2-10105-0

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